

1867

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HON. GEORGE SHARSWOOD,

THE NOMINEE FOR

Judge of the Supreme Court of Pennsylvania.

BY A

MEMBER OF THE PHILADELPHIA BAR.

“Law and Justice according to law; this is the only secure principle upon which the controversies of men can be decided.”—*Professional Ethics.*

HON. GEORGE SHARSWOOD.

On the 11th day of June, a Judicial Convention assembled at Harrisburg, and placed in nomination for the office of Judge of the Supreme Court, the Hon. George Sharswood.

This Convention, composed of representatives of the Democratic party, followed the nomination with a platform partizan in its character, aside from and in derogation of the high duty for which it was assembled.

It is with no purpose of invidious comparison between parties that this is stated: a Convention, composed of representatives of the Republican party, held on the 26th day of June, at Williamsport, placed in nomination the Hon. Henry W. Williams, of Allegheny, and in like manner coupled the nomination with resolutions intended to be politically binding on the conscience of the Judge.

These two Conventions, collectively representing the whole people of the Commonwealth, sought to substitute partizan advantage for a just administration of the law—they sought, also, to change the Judiciary of the State into an engine of political power.

It is generally understood, that the nominees have tacitly declined to receive these platforms as obligatory upon their offices. The evil intended has been thus fortunately forestalled, and all political advantage in the nominations destroyed; but there yet remains to the people to decide between them, and this we hope and believe will be done as heretofore—on the ground of fitness alone.

We are to decide, not to whom we shall confide the leadership of our respective parties, or the government of our nation, or any other office properly political or partizan in its character, but to whom we shall confide judgment between man and man—decisions upon which depend the preservation of our homes, and their transmission to our children ; our reputations, or our lives.

No amount of labor, no success, no reputable conduct of life, can avail a man whose cause is committed to a partizan, corrupt or incompetent Judge. In that office, more than any other, our interests demand the highest ability, the most incorruptible integrity, and entire freedom, as far forth, as is humanly possible, from all political bias whatever.

Of Judge Williams we have certainly no unfavorable knowledge ; that he fitly holds his present position we may well believe. We ask only, in the name of the high and responsible position for which he has now been nominated, that his judicial claims may be made widely known, in order that a just decision upon them may be reached by our citizens. In a way as consciously imperfect as it is below the merits of the great object for which it is written, the claims of his opposing candidate are here submitted to our citizens :

George Sharswood was born in Philadelphia, on the 7th of July, 1810. He is a man of large frame, and of great power of endurance ; in manner, he is characterized by entire simplicity and unvarying kindness. In his intercourse with the profession, he has been uniformly courteous.

He graduated from the University of Pennsylvania in 1828, and received the highest honors of his class, delivering the Latin Salutatory Oration.

Immediately after his graduation, he commenced the study of law in the office of the Hon. Joseph R. Ingersoll, to whom he inscribed, as a testimonial of respect and gratitude, one of the most valuable little works known to the profession. He addresses him in this inscription as HIS HONORED MASTER. Mr. Ingersoll was one of the ablest representatives of the Philadelphia Bar ; and under the instruction of such a master, he began the foundation of that orderly system of reading on which now rests the firm structure of his judicial power.

On the 5th of September, 1831, he was admitted to the Bar, where he remained, with what is described as the usual share of professional business, for six years. During these years he interested himself a little in political affairs, and found leisure also, as he has done through all the unexampled mental labor of his life, for those social duties which should characterize the intercourse of a citizen with the community to which he belongs.

But these were mainly years of continuous labor in his professional course. The record in part of these years exists; it was written in 1854, for a class of his students in the University of Pennsylvania; I will print here for younger men fresher in the toil, the list of works which he recommends and which formed a part of his reading. In this list is recited *The Mirror of Justice*, from which he has drawn so often, as from a perennial well, and the unfailing commentaries of Blackstone, which, with his notes, is now the text book of the student throughout America.

This list of volumes, faithfully completed, is within the power of any man within that range of years, but rarely among the working men of the profession—even among the most eminent—is it during the period of their legal labors accomplished.

Yet this list only indicates the measure of Judge Sharswood's labors; he was even then the master of the whole range of written law.

He had acquired, through patient study the ability to wield the power of jurisprudence for the great advantage of the community in which he lived, and to transmit it to the profession for future generations.

In Real Estate, I find Lord Hale's *History of the Common Law*; Reeves' *History of the English Law*; Dalrymple's *Essay*; Sullivan's *Lectures on Feudal Law*; Sir Martin Wright's *Introduction*; Robertson's *History* and Hallam's *History*; Sir Henry Finch's *Nomotechnia*; the *Doctor and Student*.

The Prefaces to Lord Coke's *Reports*; Littleton's *Tenures* and *The First Institute*; Preston on *Estates*; Fearne's *Contingent Remainders*, not always read by the American student and more rarely comprehended; Sheppard's *Touchstone*; Preston on *Abstracts of Title*, and Preston's *Treatise on Conveyancing*; Ballow's *Equity*; Jeremy's *Treatise on Equity*, and Story's *Commentaries on Equity*; Powell on *Mortgages*; Bacon's *Reading on the Statute of Uses*; Sanders on *Uses and Trusts*; Hill on *Trustees*; Lewis on *Perpetuities*; Sugden on *Powers*; Chance on *Powers*; Sugden on *Vendors and Purchasers*; Woodfall on *Landlord and Tenant*; Roscoe on the *Laws of Actions*; Cruise on *Fines, &c.*; Pigott on *Common Recoveries*; Powell's *Essay*, and Jarman on *Wills*. In *Practice, Pleading and Evidence*; *The Introduction to Compton's Practice*; Tidd's *Practice*; Stephen on *Pleading*; Broom's *Parties*

He had acquired the right to judge among men. As that Roman citizen to whom, by virtue of his birth, was to be confided the care of its great Aqueduct, first by years of patient study of the designs of its successive builders, mastered every underwork that sustained the long line of its waters—so he, by days and nights given to a more exhaustive labor, followed backward to its purer sources in the customs of our forefathers, that greater structure by which the current of justice is conveyed to our doors. He who was designed by nature for this great office, first made himself a Judge.

In 1837, Judge Sharswood's studies were temporarily interrupted; he was called by a general desire of the citizens of his District to represent them in the Legislature.

to Actions; Greenleaf on Evidence; Selwyn's *Nisi Prius*; Leigh's *Nisi Prius*, which he has enriched with valuable notes; Mitford's *Pleading in Equity*; Story's *Equity*; Barton's *Historical Treatise*; Newland's *Chancery Practice*; Gresley on Evidence, and the fourth part of the *Institute*. In *Crimes and Forfeitures*: Hale's *History of the Pleas of the Crown*; Foster's *Crown Law*; Yorke's *Consideration on the Law of Forfeiture*; The Third Part of the *Institutes*; Chitty on *Criminal Law* and Russel on *Crimes*; this work with his notes and it has passed through eight editions. In *National and International Law*; Burlamaqui's *Natural and Political Law*; Grotius *de Jure Belli et Pacis*; Rutherford's *Institutes*; Vattel's *Law of Nations*; Bynkershock's *Questiones, Publici Juris*; Wicquefort's *Ambassador*; Bynkershock's *dé foro Legatorum*; McIntosh's *Discourse*; Wheaton's *History of the International Law*; Wheaton's *International Law*; Robinson's *Admiralty Reports and Cases in the Supreme Court of the United States*. In *Constitutional Law*. The Second Part of Lord Coke's *Institutes*.

Hallam's *Constitutional History of England*; Millar's *Historical View of the English Constitution*; Wynne's *Eunomus*; De Lolme on the *English Constitution*, with Stephens' *Introduction and Notes*; The *Federalist*; Rawle on the *Constitution*; Story on the *Constitution*; Cases decided in the *Supreme Court of the United States*.

In the *Civil Law*:—Butler's *Horæ Juridicæ*; Gibbon's *History of the Decline and Fall*, chap. 44; Justinian's *Institutes*; Savigny's *Traité de Droit Romain*; Savigny's *Histoire du Droit Romain au Moyen Age*; Taylor's *Elements of the Civil Law*; Mackeldy's *Compendium*; Colquhoun's *Summary of the Roman Civil Law*, and Domat's *Civil Law*.

In *Persons and Personal Property*:—Reeves on the *Domestic Relations*; Bingham's *Law of Infancy and Coverture*; Roper on *Husband and Wife*; Angel and Ames on *Corporations*; Les *Œuvres de Pothier*; Smith on *Contracts*; Story on *Bailments*; Jones on *Bailments*; Story on *Partnership*; Byles on *Bills*; Story on *Promissory Notes*; Abbott on *Shipping*; Duer on *Insurance*; Emerigon *Traité des Assurances*; Boulay-Paty *Cour de Droit Commercial*, and Story on the *Conflict of Laws*.

On *Executors and Administrators*:—Roper on *Legacies*; Toller on *Executors*; Williams on *Executors*, and *The Law's Disposal*, by Lovelass.

Thoroughly conversant with existing laws, and accomplished in literature, he now entered upon the practical legislation of

the Commonwealth. In this position he served faithfully and acceptably. On his return he was chosen a Member of the Councils of Philadelphia. It was a period of the greatest financial distrust and ruin, which had ever overwhelmed the country. In this position, as in the other, he largely increased the confidence of his fellow citizens, and was returned for the years 1841 and '42 to the Legislature. This period of his life is not characterized by any large measure of political influence; it is rendered interesting to us, however, by the publication of his first contribution to the learning of the profession—his *Notes to Roscoe on Evidence*. It appeared in 1835. This was followed, in 1838, by Leigh's *Nisi Prius*, which contains his interesting little treatise on *Account Render*. In 1840 he published a second edition of *Roscoe*.

On his return from the Legislature he devoted himself with yet greater labor to his profession, and in 1844 published his *Notes*, with the first edition of *Stephen's Nisi Prius*. In the same year also appeared his first edition of *Russel on Crimes*. This edition was the 1st American edition of the complete work; at subsequent times he published eight editions, with exhaustive notes, both from English and American cases, his eighth edition being the only one complete in authorities to the time, in England or America. Soon after the publication of this work, on the 8th of April, 1845, he received the appointment of Associate Judge of the District Court.

Judge Sharswood at this time had become widely and favorably known; his qualifications for the position which he had now reached were universally admitted. His appointment was therefore received with general approval, and on the 1st of February, 1848, following a desire of the profession, one of his senior associates honorably gave place to him, and he became its President Judge.

From the date of his acceptance of the Judicial office, his political life, brief and unimportant, but yet characterized by an honorable conduct of its duties, ended. From that time, a period of 22 years, he has taken no part in political affairs; he has solely and singly performed the duties of his office.

About the time of his appointment as Judge, I quote from "*The Forum*," "he was chosen Professor of Law in the University of Pennsylvania; he has also been engaged for some years in the delivery of courses of lectures on Commercial Law; in both duties he has continued to the present time;

and when it is remembered that the Court over which he presides sits ten months in the year, and is continuously and laboriously occupied in every diversity of trials, certainly no better commentary can be required upon his exhaustless patience and energy of character." With the exception of these duties, until 1851, his whole time was given to organizing the business of his Court, and rendering its trials speedy and regular, and during that period he contributed nothing otherwise to the profession.

This was a work of no ordinary magnitude ; legal proceedings were in a transition state from the old formalities and dilatory processes of the law to the more prompt business-like character and decision of the modern commercial court; the gown and the wig were being laid aside in substance as well as form. It is not too much to say, that Judge Sharswood was the embodiment of this transition ; when he came upon the bench, there were fourteen hundred cases on the list untried, lying under the accumulating dust of the old system—this was at a time when only two to three hundred cases were put on the list for the term—under his Presidency, with the aid of his colleagues, every case on the list has now opportunity during its term for trial—and these have increased to two thousand brought to a term, and one thousand to trial. This is his accomplished work.

The amendment to the Constitution, rendering the Judiciary elective, was ratified in October, 1850, and the following autumn the nomination for our various Courts were made.

The Whig Judicial Conference met Sept. 17, 1851, and Judge Sharswood's name, with other able and distinguished men, was before them, but the claims of no other candidates were urged against him. There was but one ballot had, on which the whole Convention voted unanimously.

The Democratic City and County Convention met Sept. 4th, and in like manner gave Judge Sharswood a single and unanimous nomination.

The two nominations were endorsed in the successive Conventions of the Native Americans, Temperance and Workingmen—in all five Conventions.

These unanimous nominations were made in an era of the greatest popular disorganization and party acrimony ; the Native American organization had come into existence in blood ;

the lives, even, and property of its opponents were for a time insecure; in every quarter of the city Churches had been destroyed by fire and pillage; and citizens on both sides had been shot down in the streets; the old Whig party was struggling for its existence; the Democrats, a then controlling political power, were uncompromising and very bitter in their denunciation of their opponents; the Workingmen, a party which, under whatever name, must always be a powerful element in a free country, had its candidates in the field—and the cause of Temperance, intemperately advocated, had very considerable strength and influence. The whole nation, also, was at the time shocked by a wholesale slaughter of its citizens in the still-remembered Lopez invasion; and a feeling had spread everywhere of the utmost violence, at variance with law and comity, and only to be justified by the terrible nature of the event; beyond all, it was already apparent to the statesmen of the country, that a greater calamity was impending over it, which, had it been universally comprehended, would have stilled even this unexampled party rage and violence. A fugitive slave at Christiana had stood defiant for his freedom; and the lives of his owners paid the forfeiture for what was beginning to be deemed an indefensible possession of human flesh and blood; a deeper conscience was awakening throughout the North, although as yet feebly comprehended, of the brotherhood of man. A belief was gaining ground throughout the South, that with this weakening institution of human slavery was breaking down the old organization of States themselves, and meetings for their secession were being held aiming at the disruption of the integrity of the nation as a power; yet, amid all this political anarchy and personal hatred, no voice was raised against Judge Sharswood—a unanimous consent in his favor pervaded the community—he had built up by his personal character, and by an undeviating adherence to the duties of his office, a reputation then unsailable.

While there was an honest difference as to the other judicial candidates then before the people—and unsparing denunciation, even, in some instances—there was accorded to him the acknowledgment of a universal approbation. With this approval he again took that seat where his labors during all this turmoil had never been for one day suspended; and no one of all the members of those parties who believed that he would judge impartially between them as citizens, have ever had occasion to repent that preference. During the ten years which

followed, no voice of complaint from his fellow Judges, from the Bar, from the Juries which have sat before him, or from those who have been suitors there, has been uttered against him.

The great parties which then existed have outlived their power; in their substance, and, save in one instance, in their forms and names, they have passed away, but the Court over which he presides has had bestowed upon it by legislation larger duties, and has strengthened itself in the confidence of the community. Judge Sharswood has added work after work to the profession, until his name has become known to every professional man throughout the nation.

I will give a brief summary of the character and extent of these labors :

He published in 1852 the third edition of Roscoe on Evidence; the following year appeared the second edition of Roscoe on Crimes, and the third edition of Byles on Bills. This edition—the 3d American from the 6th London, of 1851—gave both the English and American cases to the time, and superseded Story on Bills in the Harvard University. This was followed successively by Vols. 66, 68, 69 and 70 of the English Common Law Reports.

In 1854 appeared “Professional Ethics,” to which allusion has been made, and which was originally written as an introductory lecture at the opening of the Fifth Session of the Law Department of the University. From this volume I make an extract; it was applied to Judge Marshall, and with the consent of the Bar of Philadelphia, I re-write it as in a large measure no less descriptive of himself.

“The eminence to which he attained in the opinion of his compatriots, even of those who could not concur in some of his views of the Constitution, the enduring monument of his greatness in his decisions, bespeak an intellect of the very first order, mental power, naturally vigorous, but brought by proper exercise to a degree of strength that made it tower above the general level of educated men. His opinions do not abound in displays of learning. His simplicity, a character so conspicuous in all his writings and actions, that first and highest characteristic of true greatness, led him to say and do just what was necessary and proper to the purpose in hand. Its reflected consequences on his own fame as a scholar or a jurist, seems never to have occurred to him. How much was his walk like the quiet and unobtrusive step of the private citizen, conscious of heavy responsibilities, and anxious to fulfil them.”

The publication of his Ethics was followed the same year by volumes 71, 73, 74, 75, and 76 of the English Common Law

Reports; these were followed by the fourth edition of that valuable work to the criminal lawyer, "Roscoe on Evidence."

In 1855 appeared volumes 77, 78, and 80 of this series of Reports.

In 1856 he published his fourth edition of Byles on Bills, volumes 81, 82, 84, and 85 of the English Reports, and his own valuable work, "The Commercial Law." The following year his eighth edition of Russel on Crimes was given to the profession, with references to the English cases from 1843, rendering the volume complete to that time for the English and American lawyer. The same year appeared volumes 67, 72, 83, 86, 87, and 88 of the English Reports.

In 1858, volumes 89 and 90 of these Reports were published, and a second edition of his "Professional Ethics," appeared in 1860.

The same year was published his fifth edition of Starkie on Evidence.

In 1861, the term for which he was elected having expired, he was again placed in nomination by the Democratic and Republican parties, whose concurring nominations was followed by the now forgotten No-party, and again elected to the same office; he has remained there until this time.

A temporary, but severe indisposition deprived the Court of his services during one term of the six years, which have followed; the general abeyance during the period of ordinary processes of law, has limited also his contributions to the profession. I find during this period his sixth edition of Roscoe on Evidence, a fourth edition of Byles on Bills, which appeared in 1866, and a sixth edition the present year.

The learned author of this latter work commends Judge Sharswood's edition to the profession, in terms of very honorable mention;* of his Blackstone I have already spoken; it is the

* PREFACE TO THE EIGHTH EDITION.—In preparing for the press the eighth edition, the author has to acknowledge his obligations to two gentlemen. He is indebted to the Hon. George Sharswood, of Pennsylvania, for valuable information derived from the fourth American edition of this work edited by that eminent Judge, and enriched with notes from his own pen. To the learning and accuracy of his friend Richard Couch, Esq., formerly of the Norfolk Circuit, and now one of the Judges of his Majesty's High Court of Judicature, at Bombay, he is also indebted for assistance in collecting the authorities. London, 1 July, 1862.

Byles on Bills, eighth edition.

text book of the American student throughout the nation. The value of these works is known to the profession at large; his judicial labors during the long period of their successful publications, is better known to the community; to speak of them fully, would far outlimit these pages.

They have received at the hands of his biographer the following summary, with which I conclude my references to his professional career.

His judicial labors have now extended over nearly a quarter of a century. During that period he has

“SAT FOR TEN MONTHS IN THE YEAR, WITH A THOUSAND CASES BEFORE HIM AND HIS ASSOCIATES, BROUGHT TO TRIAL, AND NEARLY TWO THOUSAND BROUGHT TO A TERM.”

HE HAS DELIVERED WRITTEN OPINIONS IN OVER FOUR THOUSAND CASES; OF THESE, ONE HUNDRED AND FIFTY-SIX ONLY HAVE BEEN CARRIED TO THE SUPREME COURT FOR REVISION. AND OF THESE ONE HUNDRED AND FIFTY-SIX CASES, ONE HUNDRED AND TWENTY-FOUR HAVE BEEN AFFIRMED.

Before this pamphlet can be properly concluded, there is required some reference to Judge Sharswood's political opinions.

Of these, it might in any ordinary period be sufficient to say, that thirty-three years ago he expressed views as to the relations of the States to the General Government in harmony with the doctrines of the then Democratic party; that since that period, he has in no instance written or expressed any political opinions whatever. Beyond this statement nothing should be required; what Judge Sharswood may have thought personally of the question “between the Constitutional power of the whole and the power of the parts—Federal power and State power,” is no longer of any importance.

But Judge Sharswood needs no apologist nor advocate. While he held that the States were organizations, existing compatibly with the Constitution, he did not and has not, at any time, held views conflicting with the integrity and advancement of the National Government; so far from being an advocate, as has been alleged, of the secession of the States, or the inability of the General Government to exercise coercion over them, he, at the very outset of the war, nay, even before its lurid light was reddening the sky of his native State, proclaimed unmistakably her duty in the terrible emergency.

During the final arbitrament, that enlarged and settled our future, he was with the Country.

His record was one which became a good citizen in the hour of his country's peril; deprived then, as at all times, by the nature of his office, of any political action, fortunately for those who have not known him personally, his opinions were given a permanent form.

On the eve of the Rebellion, (March 17, 1860,) Judge Sharswood made a speech at the annual dinner of the Hibernian Society of Philadelphia, and I quote from it the following passage. It will be found at length in the *North American* of the 20th of that month.

In response to the sixth regular toast, "Pennsylvania," Judge Sharswood said:

"That he felt highly honored in being the guest of the Society on this, as he had been on so many former anniversaries, and especially on the present occasion, in being called on to respond to a toast in honor of his native State. Pennsylvania has not been sufficiently appreciated by her own sons. Many reasons may be given for this. There never has been a feeling of brotherhood among the people in different parts of the Commonwealth. There has been always something of a jealousy of Philadelphia through the interior, which is not to be observed in other States towards their metropolis, and which may, perhaps, be traced to early political differences. Besides which, the Quakers in the East, the Germans in the midland counties, the Scotch and Irish in the West, and the Yankees in the North, have never fully fraternized. The time is at hand when these marked distinctions of races will have worn out. The valuable, though varying traits which distinguish them, when blended in their common descendants, cannot fail to produce a state or national character, we may hope, *good* as well as *great*. The simple but earnest discipline, mental and moral, of the Friends, the steady industry and frugality of the Germans, the indomitable courage and energy of the Scotch and Irish, and the inventive enterprise and shrewdness of the sons of New England, these have all had their respective works to do in founding and settling our broad Commonwealth, and well have they done it. To their descendants, the present and coming generations, they have left the task of uniting together, and cementing more strongly the North, the South, the East and West, in the common sentiment that we are indeed all brethren of one family. In the future history of the Federal Union—this great Commonwealth of nations of which Pennsylvania is one—she will have an important part to act. She, the very Keystone of that old Federal arch, which, springing on one side from the shores of the Atlantic on the north-east, and almost from the Gulf of Mexico in the south-west, seem to meet here, as it were, in the very centre. Although her geographical position in relation to her sister States, has been much changed from what it was with the Old Thirteen, not so her political position. She is still the Keystone of the Arch. Always true to the Constitution and the Union, she will stand by these priceless legacies of the Revolution, to the very last. In every conflict which involves these—God forbid that such conflicts should ever come—you will know where

to find the sons of Pennsylvania—bravely fighting under the old Stars and Stripes as long as a single shred remains.”

Judge Sharswood had no other record than this during the war. He has had no other during his long and laborious judicial life.

But one other issue for cavil remains; it is purely professional, but in its results is alleged to have had a political effect against him. There was decided at the March Term, 1863, a case of great interest to the profession, which found its way into the newspapers, and was as much commented on as its facts were little understood. Its importance as a new question has now passed; it has been since affirmed in a like case by the Supreme Court of the State, and may be looked upon as the settled law in this Commonwealth,

The question arose between Mr. Borie and Mr. Trott, both of whom are men of unimpeachable integrity, and among the earliest members of the Union League of this city; the counsel on both sides whose names appear in the following case stated, as the parties themselves, are men of unquestionable loyalty to the government to the present hour; they were satisfied to present this question to the Court, over which Judge Sharswood presides, and they abided by its decision.

I quote from the case stated, as furnished by the counsel.

HENRY P. BORIE. *et al.*, vs. GEO. TROTT, JR. District Court of March Term, 1863. No. 1,107. Case stated for the opinion of the Court.

This is an action of scire facias sur mortgage, dated October 5, 1843; recorded the same day at Philadelphia, in Mortgage Book R. L. L., No. 5, page 466, &c., reciting therein the bond or obligation of the defendant, of even date therewith, for the payment of “the just sum of twelve thousand dollars, lawful silver money of the United States of America, in “one year from the date thereof, with interest half yearly, on the 6th “day of February and August, in like money.”

On the 2d day of April, 1863, prior to the day of issuing the writ of scire facias, in this case, prout writ, the defendant offered in payment and tendered to the plaintiffs twelve thousand dollars of the notes of the United States of America, which, by the Act of Congress of the 25th of February, 1862, were made a legal tender for all debts, &c., and tendered, also, the interest due and the cost of entry of satisfaction, which tender was made in full of the principal and interest of the said mortgage debt; and the plaintiffs refused to receive it as such, and have since brought this action—which sum has been paid to Jas. W. Paul, Esq., the plaintiffs’ attorney, to abide the decision in this case.

The questions are:

1. Whether the plaintiffs had a right, since the Act of Congress, 25th February, 1862, to require payment by defendant in lawful silver money

aforesaid; or were they bound to accept the said notes of the United States of America, which, by that Act of Congress, were made a legal tender for all debts generally.

2. If this Court should be of the opinion that the plaintiffs were bound to accept said notes; then, whether the amount tendered was sufficient, whether the defendant should not have added a sufficient amount of such notes as to make the tender equivalent to lawful silver money.

If the Court should be of the opinion that the said tender was sufficient, then judgment to be entered for the defendant: if otherwise, judgment to be entered for the plaintiffs—with right to either party to sue out a writ of error.

JOHN H. CAMPBELL,

Att'y for Defendants.

JAMES W. PAUL,

Att'y for Plaintiffs.

Judge Sharswood held that judgment should have been entered for the Plaintiff; that contracts between citizens should be held inviolate.

He nobly and truly says in this opinion,

“With Mr. Webster, I regard these provisions of the Constitution upon the subject of contracts and tenders, as “of the very highest importance,” and to be preserved under all circumstances. “They rest upon sanctions, which ought to be considered of the most inviolable solemnity at all times and in all emergencies. The true strength of a government, the best foundation on which can rest the affection and confidence of its people, is the security which it guarantees to property. This depends in this country upon those Constitutional provisions, which absolutely protect under the ægis of the Courts of Justice, alike the daily earnings of the poor and the accumulated savings of the rich man.”

However much these words may be misquoted by partizan ingenuity for partizan results, they are none the less important to the welfare of the citizen; they are well grounded and well calculated to give strength and confidence to the Government.

The case was not carried further, but, as we have said, the question does not rest on his decision. It arose again in a similar case in the Court of Common Pleas, and was carried to the Supreme Court. I quote the case and the unanimous decision of that tribunal.

Mather, *et al.*, vs. Kincke, 1 P. F. Smith, 425. Error to the Common Pleas of Philadelphia. Where this was an amicable action of covenant between Joseph Kincke, Plaintiff, and Ann W. Mather, Catherine M. Mather, and Emily R. Mather, in which the following case was stated.

“The action (covenant) is on two ground rent deeds, dated October 12, 1773, conveying to Seymour Hart two lots of ground therein described, and reserving out of each of said lots a ground rent, in the following words: Yielding and paying therefor unto the said grantor, his heirs and assigns, the yearly rent or sum of twenty-one Spanish coined fine silver pieces of eight and one-third part of a piece of eight, each piece of eight weighing seventeen pennyweights and six grains, or so much lawful money of the province of Pennsylvania as shall be sufficient from time to time to purchase or procure twenty-one such pieces of eight and one-third part of a piece of eight, on the 12th day of October forever” And containing like covenants “Prior to the 12th of October, 1863, the title to the said rents became vested in the Plaintiffs, and the title to the lots subject to the said ground rents in the Defendants. On the 12th day of October, 1863, one year’s rent became due on each of said lots under said deeds. The Defendants tendered, and have paid into Court under the plea of tender, the sum of \$42 67 in the legal tender notes of the United States, authorized by the Acts of Congress of July 11, 1862, and March 3, 1863, as payment of said ground rents so accrued. Plaintiffs refused to accept the same.”

“The Court of Common Pleas held that the covenant was not satisfied by the tender of the notes, and that the reservation was of a particular kind of coin with the alternation of its value in lawful money, and that the ground rent landlord was entitled either to a particular kind of coin, or its value in lawful money.”

The Supreme Court affirmed the Judgment. This case therefore settled the correctness of Judge Sharswood’s decision, and the law of the Commonwealth.

Let us say in conclusion, that while Judge Sharswood’s opinion necessarily invalidated the right of Congress under Constitutional provisions to issue notes which should be a legal tender, it in no wise invalidated its power to issue them with that effect at the time, or rendered them for the future practically less valuable; they rested on a basis broader than the Constitution, and were enforced by an emergency which authoritatively overrode the interests and rights of individual men.

The issue of legal tender notes, like the arrest of persons disaffected to the Government in States not engaged in rebellion, as well as trials by Military Commissions under like conditions, the unconstitutionality of which in like manner has been decided by the Supreme Court of the nation, were not because unconstitutional, the less binding on the citizen. They arose from the necessities of the rebellion, and are to be accepted as part of a condition of war.

It cannot be doubted that the Government had the power to issue these notes, and that they were and are valid money of the country for all purposes for which they were issued; but if

it be assumed beyond this, that the Government exercised the power as a constitutional right, the power still exists notwithstanding a cessation of war, and might be applied to-day to the payment of interest on gold-bearing bonds; it might be exercised for any like purpose, in any financial emergency. The Government would thus have the right to destroy every compact between man and man—to obliterate every security, and to involve the nation, by authority of law, in financial ruin. In the hands of dishonest men it would be, in effect, an irresponsible engine acting under the sanction of law.

Such a condition of the nation is certainly not admitted by its citizens of any party as existing to-day.

For our personal safety, with regard to Courts of Justice, it has been felt, we must in the exercise of the elective franchise, be uninfluenced by the passions of the hour. The decision of the corrupt, partizan or ignorant Judge, results directly on the citizen; it affects his personal liberty, his reputation, or his property; a well grounded distrust in the integrity or ability of the Judiciary, degrades the profession and results in social anarchy.

Judge Sharswood's election should have been secured beyond any peradventure; but here, in the crown of his career, he has been made, in some sort, the standard-bearer in a political campaign; a man who has shrunk, for a quarter of a century, from all political affairs, is on the one hand thrust forward to be used for the advancement of a party, and on the other hand subjected, in this false position, to the hostile attacks of its opponents; a man honored most of all, because at all times, among men of all religions, castes and parties, he has held evenly the scales of justice, is now to be measured by the rules which apply to the brawling, cunning demagogue. And this, amid all its blessings, is the curse of our institutions.

This tribute to Judge Sharswood, from a member of his profession, is written in acknowledgment of the debt of gratitude under which we rest to him for a long and faithful exercise of the Judicial office. In his election, surely, in the language of our Chief Municipal Magistrate, the Hon. Morton McMichael, written many years ago, but no less applicable now, "we have hoped and still hope that partizan influence will not be permitted to interfere."

